

2001

Suzanne Dowling f.k.s. Suzanne Hoagland v.  
Kathleen Bullen, Trolley Corners Family Therapy  
Clinic, Canyon rim Psychotherapy, John Does 1-20  
: Brief of Appellant

Utah Court of Appeals

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Phillip S. Ferguson; Christensen and Jensen

Kathleen McConkie; Wingo and Rinehart

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**IN THE COURT OF APPEALS IN AND FOR  
THE STATE OF UTAH**

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**SUZANNE DOWLING**  
**f.k.a. SUZANNE HOAGLAND,**

**APPELLANT,**

**v.**

**KATHLEEN BULLEN, TROLLEY**  
**CORNERS FAMILY THERAPY CLINIC,**  
**a general partnership, CANYON RIM**  
**PSYCHOTHERAPY, and John Does 1**  
**through 20.**

**APPELLEES.**

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**Third District Court No. 00907667**

**Case No. 20010961-CA**

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**BRIEF OF APPELLANT**

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**Appeal from the Judgment of the**  
**Third District Court of**  
**Salt Lake County, State of Utah**  
**Honorable Sandra Pueler**

---

**ORAL ARGUMENT REQUESTED**  
**Priority R. 29(b)(15)**

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## **STATEMENT OF JURISDICTION**

The jurisdiction of this court is based upon U.C.A. § 78-2-2 (4): The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction.

## **STATEMENT OF ISSUES**

Whether the trial court erred in denying Plaintiff's claims for alienation of affections and intentional infliction of emotional distress even though the Plaintiff admitted that for purposes of summary judgment that her complaint was filed within four years of when she discovered the source of the alienation? Whether claims for intentional torts are barred by the Health Care Malpractice Act?

## **STANDARD OF REVIEW**

On review of a grant of summary judgment or a motion on the pleadings treated as a motion for summary judgment under Rule 12, the party against whom the judgment has been granted is entitled to have all the facts presented and all the inferences fairly arising there from considered in a light most favorable to her. Morris v. Farnsworth Motel, 123 Utah 289

259 P.2d 297 (1953). Moreover, the appellate court reviews conclusions of law for correctness without according deference to the trial court's legal conclusions. Bonham v. Morgan 788 P.2d 497 (Utah 1989).

### **AUTHORITIES OF CENTRAL IMPORTANCE**

Plaintiff is unaware of any Utah cases that address the specific issue of when a therapist's actions exceed the scope of their employment and thereby shift the cause of action from a medical malpractice to an intentional or negligent tort. However, Plaintiff relies on Lounsbury v. Capel, 191 Utah Adv. Rep. 40(Ct. App. 1992) to show that the Utah Courts have recognized that when a physician exceeds the scope of his employment a cause of action for battery can result which is an intentional tort and not a mere cause of action for negligence. In addition, Plaintiff also relies on cases from other jurisdictions which further analyze this issue and state when a physician has exceeded their medical malpractice insurer's liability. These authorities included Mary Roe v. Federal Insurance Company, 587 N.E. 2d 214(1992) and Marx v. Hartford Accident & Indem. Co., 183 Neb. 12, 13(1968).

In relation to the alienation of affection claim Plaintiff relies on Norton v. MacFarlane, 169 Utah Adv. Rep. 12, (Utah 1991) which address the issue of when someone in a special position of trust like a professor or a psychiatrist alienates one's spouse's affections from the other. Norton continues that Defendant's actions must be a controlling cause of the marriage destruction.

### **STATEMENT OF THE CASE**

Plaintiff originally contacted Defendant in order to help counsel her two daughters. Plaintiff and her spouse (James) would attend the meetings in order to check on the progress of their children. Defendant began to develop feelings for James to such a degree that she initiated an intimate relationship with him prior to the filing of the divorce between Plaintiff and James.

James and Defendant were eventually married. Plaintiff alleges as a result of Defendant's conduct her marriage greatly suffered to the point it was destroyed thereby causing the tort of alienation of affection. Plaintiff also alleges that Defendant's malicious conduct caused Plaintiff to suffer emotional harm.



At issue in this case is whether Defendant's conduct exceeded the scope of her employment. Plaintiff would argue that Defendant conduct was intentional and since the tort for alienation of affection does not require a patient-therapist relationship, neither tort is covered by the Utah Health Care Malpractice Act. After Plaintiff filed her complaint, Defendant filed a motion for Summary Judgment. The Trial Court, Honorable Sandra N. Peuler presiding granted Defendant's motion for Summary Judgment.

### **STATEMENT OF FACTS**

1. Apellee, Kathleen Bullen(Bullen) was a licensed clinical social worker, engaged in: interviewing, counseling and/or providing professional therapy with respect to Appellant, Suzanne Dowling's(Dowling) family as a whole and to her daughters.
2. Dowling, acting upon Bullen's representations, reasonably believed that Bullen was a therapist and/or professional counselor.
3. Bullen practiced with and was believed to be employed by, Canyon Rim and Trolley Corners.
4. Dowling was married to James Anthony Hoagland, Jr., (James), and

they resided in their marital home in Salt Lake City, Utah, with their two(2) children prior to their divorce on September 26, 1996.

5. In December 1994, Dowling's two daughters began counseling with Bullen.
6. In February 1995, Dowling, along with her two daughters and James, began family counseling with Bullen. As a result of Bullen's position as a special position of trust in the eyes of Dowling. The family or various members of the family attended counseling with Bullen until approximately June of 1996.
7. During that time, the two daughters continued therapy sessions with Bullen, during which Bullen included Dowling in the last 1/3 of each session.
8. During January 1996, James Hoagland filed a Petition for Divorce from Dowling.
9. In February of 1996, one month after James filed for divorce, Bullen suggested to Dowling seek another counselor, namely Susan Culbertson.
10. On or about September 26, 1996, James was granted a divorce from

Dowling over the objection of Dowling.

11. Near this same time, James and Bullen announced that they were dating, and they were eventually married.

12. Dowling later learned that Bullen had initiated an intimate relationship with James, prior to the filing of the petition for divorce.

### **SUMMARY OF ARGUMENTS**

When reviewing the facts of this case it becomes clear that the trial court erred in granting the Defendant's summary judgment motion. Under either a motion to dismiss standard or a summary judgment standard the Plaintiff's allegations in her complaint and affidavit, viewed in the light most favorable to her, support several causes of action against the Defendant.

On the Plaintiff's first claim of Alienation of Affection as well as the Intentional Infliction of Emotional Distress claim, there are several material issues of fact in dispute which, if proved, would allow a jury to find in the Plaintiff's favor.

Thus, the decision of the trial court should be reversed and Plaintiff should be allowed to proceed to discovery and submit her evidence to a jury.

## **ARGUMENTS**

### **I. THE TRIAL COURT ERRED BY FAILING TO ALLOW THE PLAINTIFF TO SHOW THAT SHE WAS NOT A PATIENT OF THE DEFENDANT**

The trial court refused to accept the fact that Plaintiff was not a patient of the Defendant. Plaintiff attended various sessions to review the progress of her children. When she would attend the last third of each session, she was there to help the girls and not to receive counseling for herself. Her presence can more closely be analogized with a parent attending parent teacher-conferences than a patient-therapist relationship. It should also be noted that all of the bills were in the daughter's names and not the Plaintiff's.

### **II. THE TRIAL COURT ERRED BY REFUSING TO ACCEPT PLAINTIFF'S ARGUMENTS THAT HER CLAIMS EXIST INDEPENDENTLY OF ANY PATIENT-THERAPIST RELATIONSHIP.**

The tort of alienation of affections and intentional infliction of emotional distress exists independently of any patient-therapist relationship. Neither of the elements to prove the torts for alienation of affection or the intentional

infliction of emotional distress require that there be a patient-therapist relationship. In fact none of the Utah case law states that a patient-therapist relationship is one of the elements to establish either of these two claims.

Plaintiff's claim could prevail even if she had never had contact with Bullen in a therapy setting. This is because Plaintiff's claims do not stem from any actions from Bullen as a therapist. Instead they relate back to Defendant's intentional conduct to steal Plaintiff's husband and to cause great emotional distress to Plaintiff.

### **III. INTENTIONAL TORTS ARE NOT PROTECTED BY THE HEALTH CARE MALPRACTICE ACT AND THEREFORE ARE NOT LIMITED TO THE TWO YEAR STATUTE OF LIMITATIONS.**

The plaintiff's causes of action are intentional torts – they are not based on a negligence theory and are thus not contingent on either 1) a doctor-patient relationship or 2) a special duty of care. In other words, these are claims that may be brought regardless of the profession of the Defendant, and they have a four-year statute of limitations.

Generally malpractice insurance does not cover intentional torts, but only

torts committed in the scope of practice. Here the plaintiff was not the patient of the defendant and was thus outside the scope of the doctor-patient relationship. The best analogy is that if my doctor negligently drops a book on my toe at church, I have a cause of action against him sounding in negligence – with a four-year statute of limitations. If, on the other hand, he removes the wrong lung in an operation, I have a malpractice claim, because it was within the scope of treatment. It would be patently unfair to allow a doctor a two year statute of limitations for all his or her actions simply because he/she has a medical degree.

This distinction is recognized by the Utah Court of Appeals in Lounsbury v. Capel, 191 Utah Adv. Rep. 40, 836 P.2d 188(Ct. App. 1992) 1992 Utah App. Lexis 123(1992)., in which it references a battery claim against a physician based on lack of consent:

A battery is an intentional tort which, by definition, is not a cause of action for negligence. A claim in battery or trespass may lie . . . where an operation is performed without the patient's consent or where the operation is not the surgical procedure to which the patient gave his consent. By contrast, where the consent to the treatment was given but with insufficient or incomplete disclosure of risks, the cause of action is in medical malpractice based on negligence of the physician to meet a recognized standard of care. Baltzell v. Van Buskirk, 752 S.W.2d 902, 906 (Mo. App. 1988).

For further understanding of this point we must look to other jurisdictions. The landmark case on defining what is professional services is Marx v. Hartford Accident & Indem. Co., 183 Neb. 12, 13(1968), coming from the Supreme Court of Nebraska. The clearest interpretation of this case and others of a similar ilk comes from California in Mary Roe v. Federal Insurance Company, 587 N.E. 2d 214(1992) which began by reiterating the Nebraska decision, “A medical malpractice insurer’s liability is... limited to the performing or rendering of professional acts or services. Something more than an act flowing from mere employment or vocation is essential. The act or service must be such as exacts the use or application of special learning or attainments of some kind.”

The California Court then further extrapolated on this case by outlining four considerations. The most pertinent are the last two:

(3) that, when there is a complaint of malpractice, attention should focus on the act or service performed rather than the fact that the alleged wrongdoer was a physician or dentist because ‘the scope of professional services does not include all forms of a medical professional’s conduct simply because he or she is a doctor or dentist’ Niedzielski v. St. Paul Fire and Marine Ins. Co., 134 N.H. 141, (1991) and (4) that, to fall within the insuring language like that used here, there must be a causal relationship between the alleged harm and

complained-of professional act or service, that is, it must be a medical or dental act or service that causes the harm, not an act or service that requires no professional skill. Common sense of course, will always provide a useful guide in differentiating covered from uncovered cases.”

When considering the facts it becomes apparent that the two intentional torts committed by the Defendant were acts outside the scope of her employment.

**a. Alienation of Affection**

The first tort to be considered is alienation of affection. The elements of alienation of affection are: 1. the fact of marriage, 2. that the Defendant willfully and intentionally 3. alienated the spouse’s affections(Defendant’s acts must be the controlling cause and this must be proven by clear and convincing evidence) 4. resulting in the loss of comfort, society and consortium, 5. malice(to justify punitive damages). When reviewing the elements it can clearly be established that the Defendant meets all the requirements:

**1. The fact of marriage.**

Plaintiff’s first encounter with Defendant was while she was still married. Both Plaintiff and James were trying to make the marriage more successful.



Since all marriages have high and low periods it is hard to gauge what makes one marriage better than another one. The one fact that is clear is that both Plaintiff and James wanted to stay married and were doing everything in their power to make their marriage stronger.

2. That the Defendant willfully and intentionally,

3. Alienated the Spouse's affections(Defendant's acts must be the controlling cause and this must be proven by clear and convincing evidence.).

The Defendant knew that her actions would lead to the break up of the marriage. She willfully and intentionally became involved with James, knowing that this would alienate him from Plaintiff. Without Defendant's third party intervention Plaintiff and Defendant would be in a different situation today. The court has specifically addressed the issue of when someone in a special power situation alienates one spouse's affections. In Norton v. MacFarlane, 169 Utah Adv. Rep. 12, 818 P.2d 8(Utah 1991). The defendant was the doctor of the plaintiff's wife. The court stated:

There are those in special positions of power, status, or authority who may illicitly use sex to satisfy their own passions or for otherwise improper ends. There are any number of such relationships, i.e.,

professors and students; physicians and patients; psychiatrists, psychoanalysts, or psychologists and clients; and employers and employees. Those who use positions of power or authority for the purpose of obtaining sexual favors and produce an alienation of affections between the one in an inferior position and his or her spouse, abuse and overreach any legitimate power they may have. In such cases, the consequence may be not only the breakup of one or perhaps two marriages, but also unforeseeable consequences in the future lives of the children from such marriages. Nelson v. Jacobsen 669 P.2d 1207, 1222(Utah1983) (Stewart, J., concurring and dissenting).

We do not now, however, make the existence of such a relationship a necessary element in the proof of causation. We view the enumerated relationships, and others in which one may improperly use power, status, or authority to obtain improper and illicit sexual favors, as examples of what can be evidence of causation. When such relationships exist and are improperly exploited, the causation issue may be more easily resolved. It is, however, possible that the "subordinate" party may also use the relationship for his or her own ends. Certainly, the mere existence of such a relationship does not suffice by itself to establish causation in an action for alienation of affections, but it may be probative of the causation element if the "superior" party abuses the relationship for illicit sexual purposes. In any event, we make clear that the tort will lie, even if no such power, status, or authority relationship exists.

Whether or not there is such a relationship, we hold that a plaintiff must prove by clear and convincing evidence that it was the conduct of defendant that constituted a controlling cause of the injury to a spouse's consortium interests and that his or her conduct was not just incidental to other causative factors that destroyed or damaged the marriage or conjugal relationship. Norton v. Macfarlane 169 Utah Adv. Rep. 12, 818 P.2d 8(Utah 1991).

#### 4. Resulting in the loss of comfort, society and consortium.

When reviewing the facts of this case it is clear that there can not be a greater loss of comfort, society and consortium then the divorcing of two parties. In addition, we must argue that the relationship was not severed until the divorce became finalized, or in the alternative that there must be an objective standard, in order to prevent Defendant from claiming that love was lost years before. We may be able to argue that using the subjective standard of the Defendant, is prejudicial to the Plaintiff, and does not recognize the principle that it is when the Plaintiff is injured that the statute of limitations begins to run. This rule is consistently applied in other areas of tort law.

A court will seek to make the damages “proportionate” to the loss of the injured spouse. On the issue of damages, the court will consider such factors as the duration and quality of the marriage relation, including the extent to which genuine feelings of love and affection existed between the spouses prior to the intervention of the Defendant. *Nelson v. Jacobsen* 669 P.2d 1207,1222(Utah 1983). Here the Plaintiff must prove damages due to the loss of the relationship. In this case, the Plaintiff has submitted a long list of damages.

5. Malice (to justify punitive damages).

In this case the malice arose when Bullen put her needs before all those around her. She was jealous of the relationship that she saw between Dowling and James. This jealousy caused her to act in an unethical manner in that she stole someone else's husband. She had fallen in love with her patient's father. She knew that any action on her part to form a relationship with James would cause great emotional distress to Dowling.

**a. Intentional Infliction of Emotional Distress**

To sustain a claim for intentional infliction of emotional distress, a plaintiff must show that: 1. The conduct was outrageous and intolerable in that it offended against the generally accepted standards of decency and morality; 2. defendant intended to cause, or acted in reckless disregard of the likelihood of causing, emotional distress; 3. plaintiff suffered severe emotional distress; and 4. defendant's conduct proximately caused Plaintiff's emotional distress. See Samms v. Eccles, 11 Utah 2d 289, 293, 358 P.2d 344, 346-47 (1961); White v. Blackburn, 787 P.2d 1315, 1317 (Utah Ct. App.

1990).201 Utah Adv. Rep. 21, 844 P.2d 949 cited by Retherford v. AT&T Communications of Mt. States, Inc. (Utah 1992) 1992 Utah Lexis 120.

1. The conduct was outrageous and intolerable in that it offended against the generally accepted standards of decency and morality

Here, the Defendant breached a rule of professional conduct. While not dispositive of the issue, it a breach of professional conduct is evidence of standards of decency and morality. The average person would find that even on the most basic levels an affair with a married man breached the commonly held moral standards.

2. Defendant intended to cause, or acted in reckless disregard of the likelihood of causing, emotional distress

The Defendant entered her relationship with James with eyes wide open. She is a licensed clinical social worker someone whose sole employment purpose is to help people work on strengthening relationships with others and with themselves. It is inconceivable that she was unaware of the ramifications of her actions when she became involved with a married

man. Especially since she was clearly on a familiar basis with the wife and children.

3. Plaintiff suffered severe emotional distress

As a result of Defendant's actions Plaintiff has suffered tremendously. In addition to losing the companionship of a spouse. Her financial situation is also very precarious. She has lost the companionship of having a spouse. Instead of raising her children with a partner she must bare the emotional and financial burden primarily alone.

4. Defendant's conduct proximately caused Plaintiff's emotional distress

Plaintiff was making every effort to save her marriage up until the point that she learned that the Defendant had turned her husband against her. Defendant's conduct was the gravamen in destroying the marriage between Plaintiff and James. Before they met Defendant they were both trying to work on improving their marriage.

The timing of when the tort occurs is different for emotional distress than it is for alienation of affections. In Retherford (supra), the court stated:

Often, however, emotional distress does not so much occur as unfold--for example, where a defendant subjects a plaintiff, not to a

single outrageous act, but to a pattern or practice of acts tolerable by themselves though clearly intolerable in the aggregate. ... We have been unable to locate authority that is directly on point concerning the application of statutes of limitation to a pattern of conduct that constitutes, in the aggregate, intentional infliction of emotional distress. However, we find the treatment of claims of alienation of affections instructive in this regard. In adjudicating such claims, which often allege a series of wrongful acts over a substantial period of time, courts have determined that the statute of limitations begins to run when the alienation is accomplished, i.e., when love and affection are finally lost. See e.g., Gibson v. Gibson, 244 Ark. 327, 424 S.W.2d 871, 874 (Ark. 1968); Dobrient v. Ciskowski, 54 Wis. 2d 419, 195 N.W.2d 449, 451 (Wis. 1972); see also Flink v. Simpson, 49 Wash. 2d 639, 305 P.2d 803, 804 (Wash. 1957); Strode v. Gleason, 9 Wash. App. 13, 510 P.2d 250, 254 (Wash. Ct. App. 1973). Applying this standard by analogy, we hold that the statute of limitations for intentional infliction of emotional distress does not begin to run until the distress is actually inflicted, i.e., when the plaintiff suffers severe emotional disturbance. Rutherford v. AT&T Communications of Mt. States, Inc. (Utah 1992) 1992 Utah Lexis 120.

#### **IV. THE PLAINTIFF FILED HER CLAIMS WITHIN THE APPLICABLE STATUTE OF LIMITATIONS PERIOD.**

The proper statute of limitations period for Alienation of Affections is four years. Hodges v. Howell 4 P. 3d 803, 2000 Utah App. 171, 397 Utah Adv. Rep 3 (Ct. App. 2000).

The statute of limitations for alienation of affections “begins to run when alienation is accomplished i.e. when love and affection or finally lost.” Rutherford v. AT&T Communications 844 P. 2d 949 (Utah 1992). (That is

a question of fact for the jury. Andreni v. Hultgreen 860 p. 2d 916, 919 (Utah 1993). See also Hodges v. Howell 4 P. 3d 803, 2000 Utah App. 171, 397 Utah Adv. Rep 3 (Ct. App. 2000). This has been defined as “the point at which a person reasonably should know that he or she has suffered a legal injury”).

In this case, the Plaintiff filed her complaint on September 25, 2000. The divorce was granted over Suzanne’s objection on September 26, 1996. Thus we can argue that the Plaintiff filed this claim within four years of the divorce becoming final. Which is the objective measure of when the relationship was severed.

The proper statute of limitations for intentional infliction of emotional distress is four years according to U.C.A. § 78-12-25.

## **CONCLUSION**

The trial court’s decision that Defendant’s Motion for Summary Judgment should be granted was fatally flawed for a number of reasons. The first reason is the mere possibility that there was a patient-therapist relationship does not automatically force the tort claim from one of an



intentional tort to being encompassed by the broad penumbra of the Utah Health Care Malpractice Act.

In addition the Court failed to take into consideration the fact that the torts committed by Defendant far exceeded to scope of her profession. Thereby preventing the torts from falling under the Malpractice Act.

The various cases of this jurisdiction and others that have more closely addressed the issues at hand, show that it is possible to have a medical profession exceed the scope of their profession and no longer be covered by malpractice insurance. This fact alone should allow this case to proceed past the Summary Judgment Motion.

DATED this 3 day of June, 2002.

WINGO & RINEHART



Kathleen McConkie  
Attorney for Plaintiff

# **ADDENDUM**

-1-

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

SUZANNE DOWLING,

Plaintiff,

vs.

KATHLEEN BOWEN,

Defendant.

Case No. 000907667

Hearing  
Electronically Recorded on  
October 28, 2002

BEFORE: THE HONORABLE SANDRA PEULER  
Third District Court Judge

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-2-

P R O C E E D I N G S

(Electronically recorded on October 29, 2002)

THE COURT: Good afternoon. Let me indicate we're on the record. The matter before the Court at this time is a hearing in the case of Dowling versus Bullen, case No. 000907667, and I'll ask Counsel to state your appearances for the record.

MS. McCONKIE: Kathleen McConkie, your Honor, appearing on behalf of Ms. Dowling.

THE COURT: Thank you.

MR. FERGUSON: Phil Ferguson for the defense.

THE COURT: Thank you. I did have an opportunity to review the pleadings that you filed. I did not -- although I appreciate receiving copies of the cases, did not have an opportunity to read any of the cases, so you might point out if there's some that I maybe should have read.

Mr. Ferguson, if you would like to go ahead and start. I just need to find a clean piece of paper before you start talking to me. Okay.

MR. FERGUSON: I hope your desk is cleaner than mine.

THE COURT: Pardon me?

MR. FERGUSON: I said I hope you can find one on your desk.

THE COURT: I did actually just threw a bunch away. I hope I didn't need them.

1           MR. FERGUSON: As the Court undoubtedly knows, as  
2 you've indicated having read the paperwork, this case involves  
3 what I think is a relatively straightforward issue, and it's  
4 primarily a legal issue. That's whether an alienation of  
5 affections claim that realizes in the context of a therapy  
6 relationship is governed by the statute of limitations in the  
7 medical malpractice act. I think that is about as succinctly  
8 as we can put it. I don't think that there's any dispute over  
9 the dates, or we're not taking issue at this stage at least  
10 with the substance of the allegations.

11           The crucial base are that the plaintiff alleges that  
12 my client destroyed her marriage by persuading her husband to  
13 have sex with her sometime prior to January 1996, and that as a  
14 consequence of that the husband filed a petition for divorce.

15           THE COURT: Is the January '96 date one of the dates  
16 that was in the complaint?

17           MR. FERGUSON: Yes.

18           THE COURT: Okay. I'm just trying to make sure I  
19 remember where the dates came from.

20           MR. FERGUSON: Okay. That's alleged in the complaint.

21           THE COURT: Okay.

22           MR. FERGUSON: The divorce became final nine months  
23 later in September, September the 26<sup>th</sup>, 1996, and that is the  
24 date that Ms. Dowling says she learned that the therapist had  
25 been involved with her husband. So the issue is whether if you

1 use September the 26<sup>th</sup>, 1996 is the date of the beginning of  
2 the statute of limitations, how long do you have before you  
3 have to file your lawsuit. That's the easiest way to look at  
4 this. There are arguments for using earlier dates. That's  
5 the latest date that's available to the plaintiff under the  
6 complaint allegation to the Court.

7 Our position is pretty straightforward. This is a  
8 claim for therapist malpractice. It's governed by the Utah  
9 Healthcare Malpractice Act, which applies to therapists. It  
10 gives to plaintiff two years from the date that she knew or  
11 should have known of the negligence and the harm to file a  
12 case, and she alleges in her complaint that she knew on  
13 September the 26<sup>th</sup>, 1996 that my client had been negligent,  
14 or as she puts it, actually intentionally interfered with  
15 the marriage, and that the marriage in fact was destroyed.  
16 So everything sort of points to September the 26<sup>th</sup>, 1996.

17 Under the statute she had two years. That two years  
18 expired September the 26<sup>th</sup>, 1998. She didn't file anything  
19 until September the 26<sup>th</sup>, 2000. So she waited an additional  
20 two years. Under the plain language of the statute the case  
21 is barred, and should be dismissed as to all of these I think.

22 THE COURT: Now, when are these -- I was wondering if  
23 you should go through the complaint and tell me if there are  
24 any causes of action as you look at them that you believe were  
25 not covered by the two year statute of limitation. I know that

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1 a proposed complaint was filed and I'm not dealing with that  
2 yet, but the complaint that's on file.

3 MR. FERGUSON: No. All of the allegations in the  
4 complaint relate to or arise out of the therapy. Ms. Dowling  
5 alleges disclosure of confidential information was obtained  
6 in the therapy process. She alleges that during the therapy  
7 process Ms. Bullen had sexual relations with her husband,  
8 which was a breach of the duties that pertain to therapists,  
9 specifically the code of ethics that applies to therapists,  
10 and that she breached her fiduciary duty that she held as  
11 a therapist to the family. All of which are of course  
12 malpractice allegations. There are no allegations in the  
13 complaint that relate to anything other than malpractice.  
14 They're all covered by the statute of limitations.

15 The one case that we cited that I think pretty well  
16 analyzes the whole theoretical framework is the case of Jensen  
17 versus IHC. In that case -- it's a very complicated case, but  
18 the essence of it is that a woman had a complicated pregnancy.  
19 She went into the hospital for a C-section. Due to some  
20 negligence in the course of that C-section she was rendered  
21 unconscious and essentially totally disabled, and lived in a  
22 persistent vegetative state for three-and-a-half years. At  
23 which point she died.

24 During that three-and-a-half year period of time she  
25 was transferred to a couple of different hospitals and there

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1 was some intrigue by the lawyers and the doctors. Within  
2 two years after she died the family filed a lawsuit alleging  
3 wrongful death and medical malpractice, as well as fraud or  
4 covering up the claim.

5         The Supreme Court said, "This case is not governed  
6 by the wrongful death statute. It's governed by the medical  
7 malpractice statute." The family said, "Well, how can we sue  
8 until she dies? We should at least have two years from the  
9 date she dies." The Supreme Court said, "No, death isn't  
10 the injury here. The negligence that resulted in her being  
11 comatose is the injury, and the statute of limitations begins  
12 to run from that point."

13         So the cause of action for this medical malpractice  
14 had expired before the patient actually passed away, and the  
15 Supreme Court said, "We will not allow a wrongful death cause  
16 of action. This is governed by the medical malpractice  
17 statute."

18         The family then says, "Well, gee whiz, we didn't know  
19 a lot of this stuff. It was covered up by the doctors in the  
20 hospital. We've also filed a claim for general fraud." The  
21 Supreme Court said, "Appreciate your creative thinking, but  
22 fraud doesn't cut it. It's covered by the medical malpractice  
23 statute."

24         The medical malpractice statute has a provision in it  
25 that allows for tolling in the event of fraud, and if you can



1 prove your fraud then fine, the statute won't run, but you  
2 don't get a different statute. You get one statute, the  
3 malpractice statute. That's the one that governs your claim.  
4 That's the one that we're going to apply. We'll allow you to  
5 try and prove fraud. If you can't prove fraud, you don't have  
6 a case.

7           That reasoning applies here. There's no difference  
8 between an alienation of affection claim and a wrongful death  
9 claim or intentional infliction of emotional distress claim  
10 or a breach of fiduciary duty claim. They all arise in the  
11 context of this medical malpractice. They're all governed by  
12 the Healthcare Malpractice Act. The statute ran, and the case  
13 should be dismissed.

14           There are other cases that we cite to that discuss  
15 various aspects of the Malpractice Act, but I think Jensen  
16 versus IHC is probably the one that deals with that -- what I  
17 guess I would call the pivotal issue; does the statute apply  
18 here. If it applies, it's just way too long. If it doesn't  
19 apply, then perhaps she's got an argument.

20           The plaintiff cited no cases that said it didn't  
21 apply. There's just no authority at all to tell us why  
22 alienation of affection should be treated differently than  
23 wrongful death or fraud or anything else. So I don't think  
24 there are any cases. I couldn't find any cases. We cited  
25 those that we thought were most appropriate.

1 I'm happy to address the statute of repose if the  
2 Court would like, but I don't think it's necessary. That  
3 simply says that you have two years to file your lawsuit from  
4 when you knew or should have known, but in no event do you get  
5 more than four years from the date of the negligence. In this  
6 case the negligence happened before January '96, when my client  
7 supposedly enticed the plaintiff's husband into bed. Four  
8 years from January '96 is January 2000. No way to bring the  
9 case any later than that under any circumstances.

10 Based on that we're, you know, we're prepared to  
11 submit it, unless you have some questions.

12 THE COURT: No, the only question I have is tangential.  
13 That is as it relates to other defendants. This is Ms. Bullen's  
14 motion for summary judgment.

15 MR. FERGUSON: Right.

16 THE COURT: And so we're not dealing with the other  
17 defendants at this point; is that right?

18 MR. FERGUSON: I think that's a fair statement. To my  
19 understanding none of the other defendants have been served.

20 THE COURT: Okay.

21 MR. FERGUSON: They're not really part of the case.  
22 They're named, but nothing's been done with respect to them.  
23 They did not treat Ms. Bullen -- even the allegations of the  
24 complaint are that they're a partnership somehow and liable for  
25 her conduct. They're not a partnership, but none of that has

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1 really been developed, and they haven't been served and they're  
2 not really before the Court.

3 THE COURT: Okay, and are you still wanting me to  
4 consider the failure to prosecute under 41-B, that argument?

5 MR. FERGUSON: Only if you don't consider the statute  
6 of limitations. I think that the failure to prosecute in --  
7 well, let me back up. Somewhere along the way I saw that there  
8 had been an order to show cause in this case.

9 THE COURT: Okay.

10 MR. FERGUSON: I was not aware of that, but I saw  
11 the minutes from the clerk indicating that there had been  
12 communication between Ms. McConkie and the clerk's office, and  
13 that the Court had given additional time --

14 THE COURT: Okay.

15 MR. FERGUSON: -- for discovery to be done, and when I  
16 filed this motion including the failure to prosecute, I was not  
17 aware of that order to show cause situation. I think in light  
18 of that, and in light of the Court's ruling on that order to  
19 show cause, it doesn't make sense to pursue the failure to  
20 prosecute.

21 THE COURT: Okay. I appreciate that. Thank you.  
22 Would you like to respond, Ms. McConkie.

23 MS. McCONKIE: Thank you. The alienation of affection  
24 claim is not governed by the Healthcare Malpractice Act. For  
25 one reason because the defendant herself denied that the

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1 plaintiff was ever a patient of defendant, and that you can  
2 find in the answer to her complaint No. 9, 13, 16 and 19.

3         The idea behind the Utah Healthcare Malpractice Act is  
4 that it governs healthcare providers relating to -- or arriving  
5 out of the health needs of their patients, and it doesn't  
6 really necessarily apply to nonpatients. Now, Ms. Bullen  
7 herself has denied that there was ever a therapist/patient  
8 relationship between Suzanne Dowling and herself. In fact,  
9 she has stated that she only treated the children.

10         Because the defendant did not provide healthcare  
11 services directly to the plaintiff, she can't claim the  
12 protection of the shorter statute of limitations as a  
13 procedural requirement of the Healthcare Malpractice Act.

14         To put it simply, even if Ms. Dowling did not know  
15 that Ms. Bullen was a therapist, even if she were not a  
16 therapist, even if she didn't know her she would still have a  
17 relevant claim that she committed -- to the extent that she  
18 alienated the affections of Mr. Hoagland, Ms. Dowling's former  
19 husband.

20         The reason why this case should not be dismissed  
21 for failure to file from the statute of limitations is the  
22 statute of limitations for the tort of alienation of affection  
23 is four years, and that's discussed in the Hodges v. Howe case.  
24 That case said the statute of limitations for alienation of  
25 affection begins to run when alienation is accomplished, when

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1 love and affection are finally lost.

2           The question, then, is when the statute begins to run  
3 or when the alienated spouse's affections are finally lost is  
4 a question of fact. It's not a question of law. That's the  
5 Andreeny versus Hopefree that we cited. The Andreeny case says  
6 that the time when the statute finally begins to run has been  
7 defined at the point at which a person reasonably should have  
8 known that he or she has suffered a legal injury.

9           Now, we talk about the day. The divorce was granted  
10 in September. So September 26<sup>th</sup>, 1996, but the plaintiff only  
11 became aware of the cause of her husband's estrangement at that  
12 time, and up until that time she was attempting to make every  
13 effort to save her marriage.

14           It was only after the plaintiff clearly understood  
15 the defendant was involved in a romantic relationship with her  
16 husband that she became aware that she suffered that legal  
17 injury. It was -- and at that point she did file within the  
18 statute of limitations. She didn't file on September 26<sup>th</sup>  
19 of 2000. She actually filed on September 25<sup>th</sup>, one day before  
20 that.

21           It is well settled that a tort cause of action are  
22 proved when all of its elements come into being and the claim  
23 of action and the defendant has conceded for purposes of this  
24 motion plaintiff only became aware of the relationship between  
25 her husband and herself in September of 1996, and you can find

1 that on their memorandum in support of Defendant Bullen's  
2 motion for summary judgment of April, too.

3 In addition, there are factual disputes at issue.  
4 Under Utah law a plaintiff must prove that the defendant's  
5 actions were the controlling cause in the breakup of their  
6 marriage. That's in the Norton v. McFarland.

7 In that case the Court considered a complaint in which  
8 the plaintiff alleged that the defendant's actions were the  
9 controlling cause of the breakup of the marriage, and also that  
10 the defendant abuse of special relationship between him and the  
11 patient alienates the wife's affection.

12 Now, the Supreme Court reversed appellate Court  
13 in that case, holding that these allegations along with the  
14 existence of a special relationship were sufficient to succeed  
15 a summary judgment motion.

16 So even in the absence of a special relationship  
17 between the defendant and the spouse, a claim for alienation  
18 of affection does apply. However, the existence of a special  
19 relationship if the facts -- or the finder of facts have  
20 considered (inaudible) when the elements of the tort have  
21 been proven.

22 So there are some issues that are in dispute there.  
23 No. 1, was there a special relationship that existed between  
24 the defendant and the plaintiff's husband; No. 2, if so whether  
25 that relationship was controlling and was it the cause -- the

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1 controlling cause of the breakup of the marriage; and No. 3,  
2 was the defendant willfully and intentionally (inaudible)  
3 alienated the affections of James Hoagland towards his wife.  
4 These are all factual questions for a jury and are therefore  
5 inappropriately decided upon a motion for summary judgment.

6 Now, we disagree with the assertions that defense made  
7 that the Healthcare Malpractice Act protects all actions of  
8 healthcare providers, because they only protect the actions of  
9 those in the course of treatment. Now, the core of defendant's  
10 argument is that by virtue of the mere fact that defendant is  
11 a healthcare provider she is shielded from all liability under  
12 the Healthcare Malpractice Act.

13 Now, under defendant's reading of the statute, any  
14 healthcare provider would be protected by the two year statute  
15 of limitations no matter what the tort. Thus, under this  
16 reading a doctor who dropped a medical dictionary on the toe  
17 of his client would be -- the patient would be immune from  
18 anything but the malpractice action simply by virtue that he is  
19 a healthcare provider even if he dropped the book intentionally  
20 from a five story window. The same analysis of requiring  
21 notice of intent to commence and action and a prelitigation  
22 panel for doctors who intentionally punches a patient in the  
23 face.

24 So defendant's reading of the statute, you read it  
25 saying that every tort would be under the Medical Malpractice

1 Act would give super status and extra protection simply by the  
2 virtue of their occupation for medical provider. Under this  
3 interpretation a plaintiff who sues a doctor for damages based  
4 on caused by the doctor's drunk driving would nevertheless need  
5 to request a prelitigation panel and comply with the other  
6 formalities of the act.

7 Clearly there are limits to the kinds of acts that  
8 are protected under the malpractice statute, and a healthcare  
9 provider is not immune from suit simply because of her status,  
10 but only when the action, as the statute says, complained of  
11 arises in the course of treatment.

12 Now, Ms. Bullen herself said that Ms. Dowling was not  
13 a patient, and certainly even if we were to agree that we're  
14 taking -- in terms of the argument we're saying that she's not  
15 her patient, but even if she were her patient, certainly would  
16 the Court decide that an illicit affair was something that  
17 occurred out of the course of the treatment between the  
18 healthcare provider and the father of the patients -- of  
19 the two daughters who were the patients in this matter. I am  
20 unconvinced that the medical malpractice statute covers those  
21 kinds of actions.

22 I would -- I appreciate the fact that the Court  
23 will not consider failure to prosecute. I would just for  
24 the information of the Court like to say that I did have a  
25 discussion with Jay Jensen early on about doing a planning and



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1 scheduling conference, and at that time he was going to file  
2 an immediate motion to dismiss and we decided to wait until it  
3 happened. I made an attempt to contact him on that, and he  
4 apparently hasn't been well and the case has had some delay in  
5 getting reassigned. So just for the information of the Court,  
6 that's what happened, Judge.

7           The plaintiff's claim for alienation of affection was  
8 filed within the four year statute when the plaintiff learned  
9 that she'd suffered a legal injury. Because Suzanne Dowling  
10 was never a patient of the defendant, the Utah Healthcare  
11 Malpractice Act does not apply in this case, and  
12 the plaintiff's complaint specifically (inaudible) all of the  
13 elements of alienation of affection, many of which are disputed  
14 factual matters. Therefore, it would be inappropriate that  
15 this motion -- that this case should be dismissed, and the  
16 Court should allow the plaintiff to prove each element at  
17 trial. Thank you.

18           THE COURT: Let me ask you two questions if I could.

19           MS. McCONKIE: Uh-huh.

20           THE COURT: Based upon the fact that you're arguing the  
21 alienation of affection cause of action, are you conceding that  
22 the other causes of action are going to fall by the wayside  
23 because there's a statute of limitations?

24           MS. McCONKIE: I think that the other causes of action  
25 are going to fall by the wayside.

1           THE COURT: Okay, and the second thing, second question  
2   that I had is I don't remember seeing in the summary judgment  
3   pleadings that I reviewed any issue about whether or not there  
4   was a therapist/patient relationship. I thought there was some  
5   mention that the whole family was involved in therapy at some  
6   point.

7           MS. McCONKIE: Well, what happened was that there  
8   had been some difficulty in the family, there had been some  
9   stress in the family. The family had decided to come because  
10   of Mr. Hoagland's anger problems and because the children were  
11   stressed and I think probably because there was marital stress,  
12   and they brought the children in to see Ms. Bullen.

13           Now, initially my client assumed because she sat --  
14   she did sit in on a number of those, and so did Mr. Hoagland,  
15   but my client never received therapy from -- individually  
16   from Ms. Bullen. In fact, Ms. Bullen herself denied that she  
17   ever had a patient/therapist relationship. I think my client  
18   believes what maybe there might have been a patient/therapist  
19   relationship, but for purposes of this argument we're saying we  
20   don't think there was. So therefore she denied it.

21           THE COURT: Well, and understand, if you will, the only  
22   thing -- the only record that I have at this point is what's  
23   contained in the file. So where would I look in the pleadings  
24   to find what's disputed or not relative to that.

25           MS. McCONKIE: Well, her denial was in her answer,

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1 paragraph 9, which my notes say 9, 13, 16 and 19. Let me grab  
2 that.

3 THE COURT: Okay, and then where do I look in the memo?

4 MS. McCONKIE: Oh, excuse me. The memorandum was on  
5 page 2, I believe. The memorandum in support of Defendant  
6 Bullen's motion for summary judgment, page 2, but I think that  
7 had to do, your Honor, with when defendant conceded for the  
8 purpose of the motion that the plaintiff became aware of the  
9 relationship between her husband and the defendant.

10 MR. FERGUSON: I think I made -- my opening memo, page  
11 2 --

12 THE COURT: I think that's where I was looking, but --

13 MR. FERGUSON: -- paragraph 5 of the statement of  
14 undisputed facts. "Plaintiff alleges that both she and the  
15 then husband were in individual therapy with Ms. Bullen, an  
16 allegation which Ms. Bullen denies, complained in paragraphs  
17 13 and 19. However, for purposes of this motion for summary  
18 judgment only, Ms. Bullen does not dispute this allegation."

19 THE COURT: Okay. Thank you for helping me find that.  
20 Ms. McConkie, did I -- was there anything else you needed to  
21 add?

22 MS. McCONKIE: No.

23 THE COURT: Okay, thank you. Rebuttal? So where does  
24 that leave me with regard to whether or not there is a disputed  
25 fact of therapist/patient relationship?

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1           MR. FERGUSON: First time I've heard it. I don't think  
2 it's a disputed fact for purposes of this motion. If you look  
3 at the complaint, at those paragraphs 13 and 19, it's pretty  
4 clear that Ms. Dowling alleges that she was in therapy with  
5 Ms. Bullen. She says, "In late '94 Dowling's family members  
6 began counseling sessions with Bullen in order to work through  
7 personal problems."

8           "Dowling along with her family attended numerous  
9 counseling sessions with Bullen. In December '94 --" and  
10 presumably later than late '94, but I don't know -- "Dowling's  
11 two daughters began counseling with Bullen. In February '95  
12 Dowling along with their two daughters and James began family  
13 counseling with Bullen. As a result of Bullen's position as a  
14 counselor, Bullen occupied a special position of trust in the  
15 eyes of plaintiff. The family or various members of the family  
16 attended counseling with Bullen until June of '96."

17           I don't know how it could be any plainer than that.  
18 She's alleging that Ms. Bullen was her therapist and Ms. Bullen  
19 breached the therapy relationship with her by disclosing her  
20 confidences, by inflicting negli -- or negligently inflicting  
21 emotional distress, and by breaching the code of ethics which  
22 does prohibit sexual relations between therapists and patients.

23           The summary judgment motion is directed at the  
24 allegations of the complaint, and if it's the case that  
25 Ms. Bullen -- or that Ms. Dowling is not claiming -- is not

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1 going to sue Ms. Bullen for being her therapist and for  
2 committing malpractice during the therapy, then there's no  
3 lawsuit. There's nothing for us to fight about. So either  
4 she is the therapist and she filed too late, or she's not the  
5 therapist and has no duty. It can't be both. She can't walk  
6 both of those paths. They're different paths.

7           So for Ms. McConkie now to stand up and say, "Well,  
8 we're going to take the allegations of the answer instead of  
9 the complaint," and say there's an issue of fact I think  
10 ignores the whole crux of the motion for summary judgment,  
11 which is to say, "Let's assume your complaint's true. You  
12 filed it too late. You can't bring the claim."

13           There's also a couple of other issues that I think  
14 need to be clarified. An alienation of affections claim does  
15 not begin to run when a person discovers a legal injury. That  
16 is a medical malpractice statute requirement. It is not a  
17 requirement for the beginning of a statute of limitations on  
18 alienation of affections.

19           There is no case law and no statute that gives the  
20 plaintiff the right to postpone filing an alienation of  
21 affections claim until she discovers her legal injury. She's  
22 confusing the medical malpractice statute with the garden  
23 variety catchall statute. They are different, and it's the  
24 medical malpractice statute that gives the plaintiff the  
25 benefit of waiting until the legal injury is discovered.

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1           So her argument that she didn't discover her legal  
2 injury either means that she recognizes its governed by the  
3 medical malpractice statute, or she has no right to claim legal  
4 injury. I mean, you can't do both of those.

5           The other issue that I think is confused is that  
6 Ms. Dowling is basing her argument on when she concluded there  
7 was no hope in saving the marriage. That is not an alienation  
8 of affections claim. It's the alienation of her husband's  
9 affection that is the basis of an alienation of affections  
10 claim. Not the alienation of Ms. Dowling's affections.

11           When Ms. Dowling concluded that her marriage was  
12 beyond repair, that she couldn't survive in that marriage is  
13 irrelevant. The issue is when did James conclude that there  
14 was no longer any value to the marriage.

15           THE COURT: But either way isn't that when the decree  
16 was entered?

17           MR. FERGUSON: Well, you could certainly make that  
18 argument, but I think the stronger argument is when he filed  
19 the petition for divorce, which was in January '96, nine months  
20 earlier.

21           The effort to try and create issues of fact about the  
22 merits of the alienation of affections claim also misses the  
23 point. We don't stand here and say that Ms. Bullen is immune  
24 from suit for alienation of affections. We simply say that if  
25 you're going to sue her for alienation of affection, you have

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1 to do it within two years, which she didn't do. So now it's  
2 too late.

3 There's no issue of immunity. There's no argument  
4 that doctors get away with certain torts that the rest of the  
5 world doesn't get away with. The fact of the matter is that  
6 the healthcare malpractice statute makes some statutes of  
7 limitation longer.

8 For example, intentional torts. The example put by  
9 Ms. McConkie of a doctor throwing a book at the patient would  
10 normally be governed by a one year statute of limitations, but  
11 under the Medical Malpractice Act it's two years. Likewise an  
12 alienation of affections claim which normally might be four  
13 years under the Medical Malpractice Act is shortened to two.

14 The point that's discussed in the Jensen case is  
15 that the legislature wanted to make claims against healthcare  
16 providers uniform. There's a wide variety of torts, there's  
17 a wide variety of contracts, wide variety of warranty issues,  
18 all of which have different statutes of limitations and the  
19 legislature said, "We're going to simplify that, and we're  
20 going to make them all fit within this two-year statute. It's  
21 two years from when you knew or should have known." Because of  
22 that, you get two years on an alienation of affections claim.  
23 That's the thrust of the Jensen holding.

24 I think it's fair to say that there probably are  
25 some factual questions that relate to whether there was an

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1 alienation of affections. Certainly Ms. Bullen doesn't admit  
2 to anything. She thinks Ms. Dowling is completely wrong, but  
3 for purposes of the summary judgment motion, we simply say,  
4 "Let's assume it's all true. Did you file on time?" No, you  
5 didn't. So the case has to be dismissed.

6 Unless the Court has additional questions, and if I  
7 can clarify anything else for you, I'll sit down and shut up.

8 THE COURT: Okay. I think you've both answered all my  
9 questions and I appreciate you both coming in today so that I  
10 could ask them. I'm going to review the Jensen case, and I'll  
11 issue a written ruling as soon as I can.

12 MS. McCONKIE: Your Honor, would you like me -- would  
13 you like the cases of alienation of affection statute, would  
14 you like me to copy them?

15 THE COURT: I do have copies of all of the cases. I  
16 just didn't have a chance to review them before I came into  
17 Court today. Thanks, though. Thanks, Counsel. We'll be in a  
18 brief recess.

19 (Hearing concluded.)  
20  
21  
22  
23  
24  
25



REPORTER'S CERTIFICATE

STATE OF UTAH       )  
                              ) ss.  
COUNTY OF UTAH     )

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

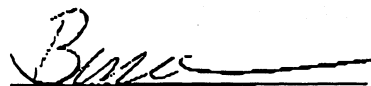
That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

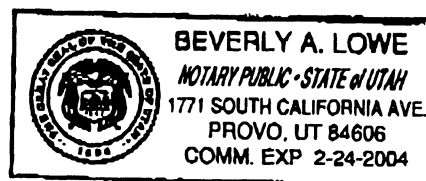
I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 4<sup>th</sup> day of June 2002.

My commission expires:  
February 24, 2004

  
Beverly Lowe  
NOTARY PUBLIC  
Residing in Utah County



**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

-----		
<b>SUZANNE DOWLING, fka</b>	:	<b>MINUTE ENTRY</b>
<b>SUZANNE HOAGLAND,</b>	:	
<b>Plaintiff,</b>	:	<b>CASE NO. 000907667</b>
<b>vs.</b>	:	
<b>KATHLEEN BULLEN, TROLLEY CORNERS</b>	:	
<b>FAMILY THERAPY CLINIC, a</b>	:	
<b>general partnership, CANYON RIM</b>	:	
<b>PSYCHOTHERAPY, and John Does</b>	:	
<b>1 through 20,</b>	:	
<b>Defendants.</b>	:	
	:	
-----		

Before the Court is defendant Bullen's Motion for Summary Judgment. The Court having heard oral argument of counsel and having further reviewed the pleadings filed in this matter, now enters the following ruling.

The defendant's Motion for Summary Judgment is granted. All of the allegations in the plaintiff's Complaint arise out of the plaintiff's claim that defendant Bullen committed malpractice in the course of treatment of various members of plaintiff's family. The applicable statute of limitations therefor is contained within the Utah Healthcare Malpractice Act, which provides a statute of limitations of two years. It is clear that this action was filed more than two years after plaintiff discovered the injury. Although plaintiff argues that no therapist/patient relationship

existed, for the purposes of this Summary Judgment the record indicates that such a relationship existed.

Based upon that, the Court grants the defendant's Summary Judgment Motion and directs counsel for defendant Bullen to prepare an Order consistent with this ruling.

Dated this 31 day of October, 2001.



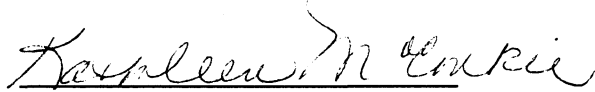
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SANDRA N. PEULER  
DISTRICT COURT JUDGE

### **Certificate of Mailing**

I hereby certify that I mailed two true and correct copies of the above and foregoing **Brief of Appellants** and placed the same in the U.S. Mail, postage prepaid, first class mail on this 3 day of June, 2002.

**Phillip S. Ferguson**  
Christensen & Jensen  
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Salt Lake City, UT 84144

  
Kathleen McConkie  
Kathleen McConkie, Esq.